Supreme Court, U.S.
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No. 95 - 446

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

EL PASO MUNICIPAL POLICE
OFFICERS ASSOCIATION, Cross-Petitioner

v.

SYLVIA DeANGELIS, Cross-Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Fifth Circuit

RESPONSE TO
CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the free speech protections of the First Amendment to the United States Constitution protect a labor union which widely disseminates blatantly sexist material in its union newspaper from any and all liability under **Title VII of the Civil Rights Act of 1964**, as amended?

LIST OF PARTIES

In accordance with **Rule 14(b)** of the Supreme Court Rules, the parties to these proceedings are identified in the caption of the case. There is a companion case pending in the 120th District Court in El Paso County, Texas (No. 90-2568) wherein the following female police officers are plaintiffs:

1. Mary Barrett
2. Lilia Beard
3. Sherri Campos
4. Maria Luisa Carrillo
5. Sandra Rau Chavez
6. Teresa Chavira
7. Rosalia Cubillos
8. Sylvia DeAngelis
9. Lucille Diaz
10. Elena Duran
11. Zoe A. Gilkison
12. Catherine M. Hendon
13. Margaret E. Hewitt
14. Patricia Madrid
15. Diedre Nelms
16. Susan K. Reed
17. Patricia J. Reyes
18. Nancy Schneider
19. Martha Sida
20. Elizabeth Sierra
21. Patricia E. Spencer
22. Andrea Villanueva

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REFERENCE TO REPORTED CASE

This case is reported at 51 F.3d 591 (5th Cir. 1995).

JURISDICTIONAL STATEMENT

The court of appeals entered its judgment on May 10, 1995. Petitioner filed a petition for writ of certiorari on August 7, 1995. Cross-Petitioner filed the Cross-Petition for Writ of Certiorari on September 6, 1995. The court has jurisdiction to review the judgment by writ of certiorari under **28 U.S.C. §1254(1)**.

STATUTORY PROVISION

The statutory provision most directly involved is **42 U.S.C. §2000e-2(a)** which is set out verbatim herein.

"(a) **Employer practices**

It shall be an unlawful employment practice for an employer--

> **(1)** to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment,

because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

STATEMENT OF THE CASE

Sgt. Sylvia DeAngelis, the highest ranking female police officer in the history of El Paso, was insulted in the Union newspaper, on an intermittent basis spanning two years, because of her sex. Examples of some of these sexist comments (which the Fifth Circuit chose not to publish in their "summarization" of the evidence) include the following:

"Let's face it! broads are just too small and can't deal with man at his root, gut only the strongest survive level!"

*****

"Oh shure, anyone can write reports, and anyone can direct traffic but when the S_____ really hits the fan, ya don't turn to the closest 110# female to back you up."

*****

"Women, men and combat just don't mix for it ain't in the Lards plan! Of course, the Libbers just can't take that!"

The sexist columns commenced in December 1987 and continued through April 1990. The Union newspaper published one thousand copies of each issue, so there was an extremely wide circulation of these offensive publications.

Sgt. DeAngelis successfully convinced the EEOC, an El Paso jury, and a Senior Judge who independently reviewed the evidence and granted declaratory relief, that the publication of this material created a hostile work environment. However, the U. S. Court of Appeals for the Fifth Circuit

held that there was insufficient evidence to support that finding.

In its Cross-Petition, the Union argues that the publication of this material is protected by the First Amendment.

ARGUMENT

Cross-Respondent joins in, and supports, Respondent's Cross-Petition for Writ of Certiorari. This court should address the apparent conflict between Title VII cases which prohibit maintaining a hostile work environment through sexist or racist verbal insults and the First Amendment which prohibits content based limitations of speech.

In *Harris v. Forklift Systems, Inc.* __U.S.___, 114 S.Ct. 367, at 371, (1993) it was expressly held that verbal conduct could violate Title VII's ban on hostile work environments. This court stated that the appropriate test was essentially a factual

determination of whether the statements were repeated with frequency, were severe, were physically threatening or humiliating, or were merely offensive utterances. *Id*, at 371.

In contrast, this court in *R.A.V. v. City of St. Paul, Minnesota*, __U.S.__, 112, S.Ct. 2538 (1992) struck down an ordinance because it prohibited the use of "fighting words" based upon race, color, creed, religion or gender. *Id*, at 2547.

These apparently contradictory holdings should be clarified.

Respectfully submitted,

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